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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1955

Nos. ~~308, 309, 310~~ 4, 7, 8

OLETA O'CONNOR YATES, et al.,
Petitioners,
vs.
UNITED STATES OF AMERICA,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
and
BRIEF OF INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, AMICUS CURIAE.

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UNITED STATES OF AMERICA,
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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

To the Honorable Earl Warren, Chief Justice of the United States Supreme Court, and to the Honorable Associate Justices of the United States Supreme Court:

Comes now International Longshoremen's and Warehousemen's Union and moves for leave to file the attached brief as amicus curiae in support of the petition for certiorari herein.

International Longshoremen's and Warehousemen's Union, as the records of this Court show,[1] is a labor organization representing almost 100,000 persons employed in the longshore, warehouse, sugar refining and allied industries on the Pacific Coast of the United States and in Hawaii, all within the Ninth Judicial Circuit whose judgment the petitioners herein seek to review. As such a labor organization it is interested generally in any case wherein are involved questions arising under the Bill of Rights and especially the First Amendment, and specifically it is interested in these cases because (1) paid government informers, long reviled in the trade union movement, played a prominent role in the prosecution and (2) its own Regional Director, Jack Hall, is presently prosecuting an appeal from a conviction[2] under this very Smith Act, to the Ninth Circuit Court of Appeals.[3] This appeal is due to be heard in the court below within the next several months. Clearly a decision here—either granting or denying the writ—will have a real impact upon Hall's case and therefore amicus curiae's patent concern with the outcome of this case is obvious.

While First Amendment questions presented by the petitions here are of grave concern to amicus curiae,

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[1] *International Longshoremen's, etc. v. Juneau Spruce Corp.*, 342 U.S. 247; *International Longshoremen's, etc. v. Boyd*, 347 U.S. 222; cf. *Bridges v. Wixon*, 326 U.S. 135; *Bridges v. United States*, 346 U.S. 209; and *Maneja v. Waialua Agricultural Co., Ltd.*, 349 U.S. 254.

[2] Various aspects of that case are reported *sub nomine, United States v. Fujimoto, et al.*, at: 101 F.Supp. 293; 102 F.Supp. 890; 105 F.Supp. 727; 107 F.Supp. 865; 199 F.2d 27; 344 U.S. 852; and 14 F.R.D. 488.

[3] No. 13,915, in the files and records of that court.

because of its general concern as a trade union with the protection of rights basic to all Americans and its special concern with the rights of Jack Hall, it will not argue those points in this brief. Such matters it assumes are fully argued in the briefs of counsel for petitioners. Instead, and because of its special concern as a trade union, amicus curiae proposes to urge upon this Court the proposition that in a trial of opinion a conviction based largely if not exclusively upon the testimony of informers, cannot and should not be permitted to stand.

Amicus curiae has requested the consent of the parties hereto to the filing of the attached brief, and while the petitioners have given their consent, the government has withheld its. Therefore, amicus curiae is compelled to make this motion to this Court for leave to file the brief.

For the foregoing reasons, amicus curiae moves for leave to file the attached brief in support of the petitions for certiorari.

Dated, San Francisco, California,
October 3, 1955.

Respectfully submitted,
RICHARD GLADSTEIN,
GEORGE R. ANDERSEN,
Attorneys for International Longshoremen's and Warehousemen's Union, Amicus Curiae.

In the Supreme Court
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OCTOBER TERM, 1955

Nos. 308, 309, 310

OLETA O'CONNOR YATES, et al.,
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vs.
UNITED STATES OF AMERICA,
Respondent.

BRIEF OF INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, AMICUS CURIAE.

In June of 1953 amicus curiae filed a brief as such in the case of *Yates v. United States*, ... F. 2d ..... (July 26, 1955, C.A. 9, Nos. 13,527, 13,535, 13,541 in the files and records of the court below). In that brief, amicus curiae urged a reversal of the sentences of conviction in those cases upon the ground that governmental use of informers in political cases was

an unhealthy, undemocratic, dangerous and anti-trade union phenomenon. A copy of that brief is annexed hereto as Appendix A.

The sentences of conviction in the *Yates* case were substantially reduced by a reversal of several of the judgments therein. While that was a contempt case and the cases now before this Court deal rather with an alleged conspiracy to violate the Smith Act, amicus curiae submits that reversals are equally in order here.

For since 1953, when the amicus brief in the *Yates* case was filed, the nation has witnessed an increased awareness by both the lay public and the judiciary of the damage done to the fabric of our society by the use of informers in political cases.

Thus, as early as July of 1954, and long before the publication of Harvey Matusow's "False Witness", *The Washington Post* observed editorially, in commenting upon the perjury committed by informers in the ***Ralph Bunche*** case:

> "It is in the area of political heterodoxy that the role of the professional informer in bound to be a malevolent one. Persons who give information to the police about conventional crimes, of course, render a service to society; and law enforcement authorities can usefully avail themselves of such information since it becomes subject to the exacting checks of due process in courts of law.
>
> "But the allegations of political informers are not usually subject to such checks." (*Washington Post,* July 3, 1954.)

Later, with the publication by Matusow of the book in which he revealed how for years he gave false testimony, other newspapers expressed grave concern over this problem. Excerpts from editorials in *The New York Times* and *The Washington Post & Herald* in the East, and later from *The Oregonian* on the West Coast, are attached hereto as Appendix B.[1]

These solemn warnings have come not only from nongovernmental sources. In recent months various branches of government, including the Department of Justice itself, have raised questions concerning the integrity and veracity of some of the informers heretofore used; indeed in one or two instances witnesses used in this very case were indicated as being suspect.

While recent judicial precedent on the subject is meager,[2] there are indications that some courts have begun to realize that the lives and liberties of Americans cannot be suffered to depend upon the testimony of political informers.

The Court of Appeals for the Seventh Circuit recently refused to direct deportation when the evidence upon which the order was based came from such a witness. Such testimony, the court said, had "no more probative value than the tattlings from a town meeting" (*United States v. Holton*, 222 F. 2d 840, 844 [C.A. 7]).

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[1]The article by Richard H. Rovere referred to in *The Oregonian* appears in *Harper's Magazine* for May 1955 under the apt title, "The Kept Witness". A very helpful study is Frank Donner's "The Informer", published in *The Nation* for April 10, 1954.

[2]While not directly in point, Mr. Justice Douglas' concurrence in *Peters v. Hobby*, 349 U.S. 331, 350, is not without relevance here.

And in his recent opinion dismissing the government's petition to denaturalize Harry Bridges, the International President of amicus curiae, District Judge Goodman cogently noted that "the testimony of the 'former' Communists was tinged and colored with discrepancies, animosities, vituperations, [and] hates * * *" (*United States v. Bridges,* ..... F. Supp. ..... [July 29, 1955, N.D. Cal., No. 28,876]).

Specifically with reference to one David Saunders, a political informer used in both the case at bar and the Bridges denaturalization case, Judge Goodman said: "Saunders' testimony is inherently flimsy; it has discrepancies. It is unacceptable." The judge also called this witness' testimony "peculiar" and "improbable".

Yet the testimony of such a man was submitted to the jury and formed (in part, at least) the basis upon which conviction of petitioners here was returned.

Common decency as well as a respect for our own institutions require that convictions so obtained be reversed.

For, as Sir Erskine May wrote many years ago:

> "Next in importance to personal freedom is immunity from suspicious and jealous observation. Men may be without restraints upon their liberty; they may pass to and fro at pleasure; but if their steps are tracked by spies and informers, their words noted down for crimination, their associates watched as conspirators—who shall say that they are free? Nothing is more revolting to

Englishmen than the espionage which forms part of the administrative system of Continental despotisms. It haunts men like an evil genius, chills their gaiety, restrains their wit, casts a shadow over their friendships, and blights their domestic hearth. The freedom of a country may be measured by its immunity from this baleful agency. Rulers who distrust their own people must govern in a spirit of absolutism; and suspected subjects will be ever sensible of their bondage."[3]

For the foregoing reasons, amicus curiae urges this Court to grant the writs petitioned for herein and to reverse the conviction of petitioners.

Dated, San Francisco, California,
October 3, 1955.

Respectfully submitted,

RICHARD GLADSTEIN,
GEORGE R. ANDERSEN,
Attorneys for International Longshoremen's and Warehousemen's Union, Amicus Curiae.

(Appendices A and B Follow.)

[3]See Donner, *op. cit. supra*, p. 309.

Appendix A

Nos. 13,527, 13,541, 13,535

In the United States Court of Appeals
for the Ninth Circuit

OLETA O'CONNOR YATES,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF OF THE INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, AMICUS CURIAE.

To the Honorable William Denman, Chief Judge, and to the Honorable Associate Judges of the United States Court of Appeals for the Ninth Circuit:

Comes now International Longshoremen's and Warehousemen's Union as amicus curiae, and files this brief urging reversal of the judgments of contempt herein.

Amicus curiae has no doubt that appellant's brief adequately deals with the many specific legal issues raised by her appeal. There is, however, one matter of more universal concern affecting the labor move-

ment and trade unions generally which should be brought to the Court's attention. It is the purpose of this brief to advise the Court of the position of at least this trade union[1] with respect to this matter.

The question involved is whether the judiciary should punish—by an unconscionably severe sentence—a person who in good conscience and because of her own life experiences cannot bring herself to make public identifications of persons as members of the Communist Party.[2] There can be no question about the fact that the coercive power of the Court below was directed toward compelling Mrs. Yates, an official of the Communist Party, to reveal publicly the identity of persons claimed to be members of that party.

It is the submission of amicus curiae that sound public policy does not warrant the exercise of federal judicial power to force the disclosure of the identity of persons comprising a political party.

Amicus curiae is not concerned with such questions as the relevancy or materiality of the questions posed; their significance or lack of it for the prosecution's case; the absence of a wilful intent to be contumacious; or the like. These are dealt with by appellant

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[1] Amicus curiae is a labor organization representing approximately 75,000 persons employed in the longshore, warehouse and allied industries, functioning principally on the Pacific seaboard and in Hawaii, within this judicial circuit.

[2] Amicus curiae does not consider or pass upon, or feel called upon to consider or pass upon, the nature and character of the Communist Party. The position it here urges is based upon the principles to be discussed in this brief and is equally applicable to any party and particularly to any trade union.

in her brief. But all this aside, amicus curiae does assert that it is contrary to healthy trade unionism to compel a disclosure such as was here sought and that the utilization of judicial power to that end would set a dangerous precedent for the entire trade union movement.[3]

In a complex society such as ours, the preservation of the economic and political liberties of the American people can be achieved only by insuring to them the full freedom of association. In other words, an individual today can effectively exercise his rights—and his duties—as a citizen only by joining with other like-minded folk; an individual cannot realistically enjoy the rights guaranteed to him by our Constitution in "splendid isolation".

This is true not only with respect to political matters (*DeJonge v. Oregon,* 299 U.S. 353, 364; United *States v. Cruikshank,* 92 U.S. 542), but also especially economic ones. (*NLRB v. Jones & Laughlin Co.,* 501 U.S. 1, 33; *American Steel Foundries v. Tri-City Trades Council,* 257 U.S. 184, 209.) That the right to associate with other citizens on matters of public concern is protected not only by the federal Constitution, but also by those of most of the states (see 11 Am. Jur., Constitutional Law, §325) demonstrates that it is one of "those fundamental principles of liberty and

[3]Amicus curiae takes it that no argument is required to convince this Court that the maintenance of a vigorous and effective trade union movement is not only the accepted public policy of the United States, but is a prerequisite to a politically and economically sound and democratic society.

justice which lie at the base of all civil and political institutions * * *". (*DeJonge v. Oregon, supra.*)

That being so, it is obviously sound public policy to implement the right by making its exercise possible and conversely it is contrary to good government to enact rules—whether by legislation or by judicial fiat—which inhibit its exercise.

It is clear that a rule compelling the disclosure of the identity of the members of a political or economic association would go far toward destroying the freedom of association. Particularly is this true of associations organized to advocate unpopular or minority views.

American history is replete with evidence that the disclosure of membership lists in a young trade union movement, for example, was one of the chief methods used by its opponents to check and stifle it. Amicus curiae knows this from its own bitter experiences in seeking to organize unorganized workers.

In their *History of Labor in the United States*, John R. Commons and his associates report that the Knights of Labor (surely not a subversive organization!) retained to the end a provision in its constitution forbidding the revelation of the names of members lest harm be done to them.[4] Many American trade unions to this day continue this practice.

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[4]Commons, et al., *History of Labor in the United States*, Vol. II, p. 339 (Macmillan, N.Y. 1918). For other evidences of "secrecy" in the American labor movement and the economic need therefor see also Commons, *supra*, Vol. I, p. 403, Vol. II, pp. 195-97, 337, 415-16.

It is not surprising that even in this day of "enlightened" labor relations, the National Labor Relations Board will not, as a matter of policy, reveal, or require the revelation of, the names of union members (*Matter of Samson Tire and Rubber Corporation and United Rubber Workers of America,* 2 NLRB 148, 156; *Matters of R. H. Siskin & Sons and Steel Workers Organizing Committee (CIO),* 4 NLRB 187, 188, n. 3) and that in this view it has been sustained by the Courts (cf. *NLRB v. New Era Die Co.,* 118 F. 2d 500 [3 Cir.]; *Marlin-Rockwell Corp. v. NLRB,* 116 F. 2d 586 [2 Cir.], cert. den. 313 U.S. 594). It is realistically recognized that such revelation would result in a destruction of the trade union.

The role of the informer or spy in American trade union history is too well known to require extensive documentation. Amicus curiae need not point to its own experiences as a case in point. The monumental survey undertaken by the LaFollette Committee within recent memory highlights only too well the odious role played by such persons in our society. The literature of the American labor movement is rich—and with good reason—in the condemnation of the informer.[5]

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[5]See, for example, Huberman, the *Labor Spy Racket* (Modern Age Books, N.Y., 1937); Sutherland, *Treacherous Passage* (Educational Department, National Union of Marine Cooks & Stewards, San Francisco, circa 1949); Palmer, *Spies in Steel* (The Labor Press, Denver, Colo., 1920); and (no named author) *Labor Spies in the NMU* (National Maritime Union of America, N.Y., circa 1939).

Objective students have long recognized the anti-social role played by the informer and have reported upon the evils which flow from his employment.

> "In every social group there are always those who are willing to achieve a modicum of self-importance by carrying tales. If these are not present in sufficient numbers, financial rewards, or fear induced by petty blackmail or threat of discharge may be used. In some plants relatives of the employer often performed the tale bearing task. In (some companies) the setting up of a spy system inside the plants is a part of personnel management policy * * * The disgust of workers with this system of espionage is adequately summed up in the phrase 'stool-pigeon'." (Brooks, *When Labor Organizes,* p. 69, Yale University Press, New Haven, 1937.)[6]

There have been innumerable judicial expressions of abhorrence at the thought of one voluntarily assuming such a role—let alone being forced by the judiciary to assume it.

A courageous and far-seeing federal judge wrote in a period not unlike the present:

> "* * * spies are always necessarily drawn from the unwholesome and untrustworthy classes. A right-minded man refuses such a job. The evil wrought by the spy system in industry has, for decades, been incalculable. Until it is eliminated, decent human relations cannot exist between employers and employes, or even among em-

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[6]See also Mills and Montgomery, *Organized Labor,* pp. 606-07 (McGraw-Hill Book Co., N.Y., 1945).

ployes. It destroys trust and confidence; it kills human kindliness; it propagates hate.

"Compare Hunter's 'Violence in the Labor Movement,' c. 11, and the authorities therefor referred to in the appendix, pp. 368, 373; also 'Labor's Challenge to the Social Order', by John Graham Brooks, c. 5.

"Compare, also, May's Constitutional History (American Ed.) p. 39 et seq., for historical instances of the baneful results of the government spy system in England." (*Colyer v. Skeffington*, 265 F. 17, 69 [D.C., Mass.].)

An astute observer long ago gave another cogent reason why public policy requires the rejection of tale bearing as a social instrument when he said:

"A man who is capable of so infamous a calling as that of a spy * * * will be more industrious to carry that which is grateful than that which is true."[7]

These are not abstract or academic observations, and the members of amicus curiae have good reason to know the soundness of the views so expressed. Certainly a Court ought not, by threat of contempt, force a witness to be a spy or tale bearer.

The damage to the fabric of American society is too great, compared to the little, if any,[8] benefit to be

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[7]Joseph Addison, *The Spectator*, July 24, 1712.

[8]We understand it to be the fact that the questions appellant refused to answer, whether or not technically material, were of no real significance in the government's case against her or her co-defendants.

gained in the course of the trial to justify a holding that the witness should be required to reveal political confidences. Particularly, when as she asserted—and certainly not without reason—that great economic and possibly even physical harm, might befall those so revealed.

Amicus curiae are concerned, then, lest the decision of this Court give status, dignity, and honor to the informer. Amicus curiae believes that liberty-loving Americans of high principle would welcome a decision of this Court which would recognize the infamous role of an informer and an order which would courageously follow such an opinion.

For the reasons hereinabove set forth amicus curiae urge that the orders appealed from be reversed.

Dated, San Francisco, California,
June 12, 1953.

Respectfully submitted,
GLADSTEIN, ANDERSEN & LEONARD,
By NORMAN LEONARD,
Attorneys for ILWU, Amicus Curiae.

Appendix B

"THE PROFESSIONAL INFORMER

"The shabby business of the paid professional informer, which has reached new dimensions under governmental encouragement during the past few years, has been given a blow by one of the well-known practitioners of the art who now says he has been lying all along.

"Harvey Matusow, a former Communist and frequent witness in cases involving charges of communism, states that he deliberately gave false testimony on various occasions, including the 1952 trial of thirteen Communist leaders, the Senate hearings on Owen Lattimore, one of the McCarthy inquiries and the trial last year of a Texas labor leader accused of filing a false non-Communist affidavit. . . .

"Matusow's recantation, or whatever it is, . . . affords a new warning against the unquestioning acceptance by political and judicial authorities alike of the accusatory statements of the professional informer. . . ." (*New York Times*, Feb. 5, 1955.)

"OUT OF THE DEPTHS

"Harvey Matusow's self-exposure as a false witness should have surprised nobody—and least of all the Department of Justice. . . . The experience of many generations has taught a lesson which everyone concerned with the administration of justice should have learned—that political informers are often unsavory, unstable persons deserv-

ing credence only when what they say can be corroborated by other evidence. In its contemporary use of political informers, the Department of Justice has callously ignored this lesson. It has based a number of recent prosecutions on the testimony of extremely suspect witnesses. . . .

"Undoubtedly the use of informers sometimes is necessary. But in the area of political offenses the testimony of informers ought to be scrutinized with the utmost care. For this is the area in which they tend to flourish and become powerful in times of tension. 'Informers,' observed Professor Zechariah Chafee, Jr., of the Harvard Law School, 'have been the inseparable accompaniment of government action against the expression of opinion since the delators of Tiberius.'" (*Washington Post & Times Herald,* Feb. 2, 1953.)

"EXALTING THE STOOL PIGEONS.

"Despite the wave of revulsion that followed the grandstanding somersault of the paid government witness Harvey Matusow, most Americans are still unaware that federal agencies maintain a stable of 'expert' anti-Communist witnesses. Richard H. Rovere tells about this shock force of informers in the current Harper's magazine:

"There are, by official admission, more than 80 such persons retained on a more or less regular basis to take the stand in loyalty cases. All are former members of the Communist party, although some allegedly entered the party as undercover agents for the government. Each is paid $25 per day plus $9 for expenses while testifying.

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IN THE

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Nos. ~~308, 309, 310~~ 479

OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, FRANK EPHRAIM SPECTOR, WILLIAM SCHNEIDERMAN, AL RICHMOND, ALBERT JASON LIMA, CARL RUDE LAMBERT, ROSE CHERNIN KUSNITZ, ERNEST OTTO FOX, BEN DOBBS, DOROTHY HEALEY CONNELLY, PHILIP MARSHALL CONNELLY and FRANK CARLSON,

Petitioners,

vs.

UNITED STATES OF AMERICA,

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE.

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Many have earned several thousand dollars per year in this fashion, drawing all or a great part of their living expenses from their services on the stand. These shady characters are formally employed as 'consultants' under a law that frees them from need for security clearance. They are among a very few of the millions of federal employees so privileged.

"In such questionable hands rest the reputations of government workers and of thousands of others. Two members of the informers' squad recently admitted that they, like Matusow, had lied under oath. Their false accusations were against a citizen who had applied for a TV station license. Actually any American could find himself at the mercy of this powerful little cell. A few years ago a Seattle Times reporter won a Pulitzer prize for uncovering evidence to prove a paid ex-Red informer had lied when he accused a University of Washington professor of attending a Communist meeting in New York. . . .

"It is one thing to rout Communists out of government. It is quite another thing to give a little group of self-styled anti-Communists an intolerable degree of power over the loyalty status of all other Americans. The government's stool pigeons should be relegated to their proper role, and their words should be taken well seasoned." (*The Oregonian,* May 2, 1955.)